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| 2014-06-04 | |
| Case Summary posted by the Task Force on Access to Justice | |
| EUROPEAN UNION: Gemeinde Altrip and others v. Land Rheinland-Pfalz (European Union), C-72/12 Altrip | |
| 1. <i>Key issue</i> | Individual members of the public concerned have standing rights to challenge permit decisions based on the claim that there have been defects in the EIA, unless it can be clearly established from information provided by the developer and the authority that the the contested decision would not have been different without the procedural defect invoked by that applicant. |
| 2. <i>Country/Region</i> | European Union/Germany |
| 3. <i>Court/body</i> | Court of Justice of the European Union, 2nd Chamber |
| 4. <i>Date of judgment</i> | 2013-11-07 |
| 5. <i>Internal reference</i> | C-72/12 (Celex 62012CJ0072) |
| 6. <i>Articles of the Aarhus Convention</i> | |
| 7. <i>Key words</i> | Environmental Impact Assessment; EIA Directive; access to justice; public concerned; standing for individuals; impairment of a right; national legislation |
| 8. <i>Case summary</i> | |
| <p>This case was a referral to the CJEU for a preliminary ruling. It involves issues relating to individuals’ standing under Article 10a of the “EIA Directive” (85/337, today 2011/92).</p> <p>The applicants in the case sought annulment of a decision by the Rheinland-Pfalz region approving plans to construct a flood retention scheme. They argued that the environmental impact assessment had been inadequate. The Administrative Court and the Administrative Court of Appeal dismissed the appeal, but the applicants appealed further to the Federal Supreme Administrative Court. As that court was uncertain whether the case law in Germany was compatible with the access to justice rights under Article 10a of the EIA Directive, it requested a preliminary ruling from the CJEU. The question concerned whether a national system which allows an individual to appeal a permit decision only if there is a casual link between the deficiency in the EIA and the final approval of the project, and if, at the same time, the procedural irregularity substantively affected a legal position of the appellant.</p> <p>The CJEU held that Article 10a of the EIA Directive precludes the Member States from granting access to justice solely in cases in which the legality of a decision is challenged on the ground that no environmental impact assessment was carried out, while not extending that possibility to cases in which such an assessment was carried out but was defective. Instead, as a matter of principle, in accordance with the aim of granting broad access to justice, the public concerned must be able to</p> | |

invoke any procedural defect in support of an action challenging the legality of decisions covered by that directive.

Nevertheless, it is unarguable that not every procedural defect will necessarily have consequences that meaningfully affect decision making, and thereby impair the rights of the party alleging it. Therefore, the CJEU stated, it could be permissible for national law not to allow standing if it is established that it is conceivable that the contested decision would not have been different without the alleged procedural defect. However, the burden of proof may not fall on the applicant and the court must make its ruling, where appropriate, on the basis of the evidence provided by the developer or the competent authorities and, more generally, on the basis of the case-file documents, taking into account, inter alia, the seriousness of the defect invoked. In particular, it should be ascertained whether that defect has deprived the public concerned of the right to access to information and to be empowered to participate in decision making, in accordance with the objectives of the EIA Directive.

9. *Link address*

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62012CJ0072>